

Service Date: March 29, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

RONAN TELEPHONE COMPANY,	)	UTILITY DIVISION
	)	
Complainant,	)	DOCKET NO. D2000.2.27
	)	
v.	)	ORDER NO. 6235
	)	
CLARK FORK TELECOMMUNICATIONS, INC.,	)	
	)	
Respondent.	)	

**ORDER ON MOTION**

Background

1. On February 25, 2000 Ronan Telephone Company (RTC) filed a complaint against Clark Fork Telecommunications, Inc. (CFT). Concurrently RTC filed a "Motion for Shortened Time to Answer Complaint, and for Immediate Emergency Order." The Montana Public Service Commission (Commission) noticed the complaint on March 3, 2000, giving CFT to March 15, 2000 to file an answer, and deferring action on the motion for immediate emergency order until after the answer was filed. CFT timely filed its answer.

2. RTC alleges in its complaint that in January 2000 it ordered certain telephone services from CFT in order to be able to offer internet services in Thompson Falls and Plains. CFT responded that, because of capacity constraints, the services could not be provided until May 16, 2000, at the earliest. In its motion for immediate emergency order RTC asks the Commission to order CFT to immediately provide the services. In the alternative RTC, by a March 17, 2000 letter supplementing its motion for immediate emergency order, suggests the Commission could order a "third party verification" of CFT's claim that limited capacity prevents it from providing the requested services. By a March 20, 2000 letter CFT responded opposing the request for third party verification.

Discussion

3. RTC's motion for immediate emergency order is denied. At this point in the proceeding the Commission knows that RTC requested services and CFT claims it is unable to provide them immediately because of capacity constraints. The Commission has no basis to conclude that CFT is in error when it asserts that limited capacity makes it unable to provide the requested services at this time. The law does not require impossibilities, § 1-3-222, MCA, and the Commission will not order an action unless there is evidence that the action can be accomplished.

4. Neither will the Commission order third party verification. Third party verification might be appropriate in some situations. However, in this case the time for the Commission to take action to benefit RTC is short, and it is unlikely that third party verification could be completed in time to benefit RTC. This is especially the case given the strong opposition to third party verification by CFT. Also, third party verification might be unnecessary in light of CFT's efforts to find alternative means to provide the requested service, discussed below.

5. While the Commission denies an emergency order and third party verification, it does find it appropriate to request and require certain things at this time in response to the pleadings, including the letters addressing third party verification. First, the Commission acknowledges CFT's good faith in trying to find a "temporary solution to meet RTC's needs." CFT Letter, March 20, 2000. The Commission hopes a temporary solution can be found, and in the "approximately two weeks" indicated by CFT. Second, the Commission will require status reports from CFT on the capacity constraints it identifies in its answer. Third, the Commission requests that CFT extend the period of time when customers will be given a new internet address, as explained at paragraph 10 of CFT's answer, for 30 days past the date RTC receives its requested services. The Commission assumes that the capacity constraints identified by CFT exist despite CFT's best efforts. Regardless, those constraints have caused RTC understandable frustration by preventing it from offering competitive internet service in Plains and Thompson Falls during a critical time when customers are changing internet addresses and may be more

receptive to changing internet providers. The Commission believes that, given the capacity constraints, it would be fair for CFT to extend the period of internet address changeovers, and thus to some degree recreate the competitive situation that would have existed had there been no capacity constraints.

#### Conclusions of Law

1. CFT and RTC are public utilities regulated by the Montana Public Service Commission. § 69-3-101(1)(f), MCA.
2. Public utilities are required to provide reasonably adequate service and facilities. § 69-3-201, MCA.
3. The Commission has jurisdiction to hear a complaint that the services and facilities of a public utility are not adequate. § 69-3-321, MCA.
4. The Commission has the authority to investigate the claims of parties in a complaint before it, including, when necessary, appropriate verification procedures. § 69-3-321, MCA.

#### Order

RTC's Motion for immediate emergency order is denied. RTC's motion for an order directing third party verification is denied. CFT is directed to file a status report on the capacity constraints identified in its answer within 15 days of the service date of this order, and every 15 days thereafter until the constraint has been removed. If further process in this docket is necessary an appropriate order will issue at a later date.

DONE AND DATED this 23rd day of March, 2000, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY McCaffree, Vice-Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)